



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/727,008

12/03/2003

Robert W. Stadler

P-11119.00

4507

27581 7590 05/21/2009  
MEDTRONIC, INC.  
710 MEDTRONIC PARKWAY NE  
MINNEAPOLIS, MN 55432-9924

EXAMINER

ALTER, ALYSSA MARGO

ART UNIT

PAPER NUMBER

3762

MAIL DATE

DELIVERY MODE

05/21/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/727,008	<b>Applicant(s)</b> STADLER ET AL.	
	<b>Examiner</b> Alyssa M. Alter	<b>Art Unit</b> 3762	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 March 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,4-21,24-41 and 44-57 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4-21,24-41 and 44-57 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 10, 2009 has been entered.

### ***Response to Arguments***

Applicant's arguments filed March 10, 2009 have been fully considered but they are not persuasive. The Applicant argues that "Combs does not teach accumulating of the difference between the updated baseline trend and one or a combination of a most recent measured impedance, a period average impedance, and the updated short term trend". In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., updated baseline trend and the updated short term trend) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Additionally, the Applicant states that "Combs does not teach determining changes in relative position of short term trend and baseline trend and accumulating, in response to the determined changes, a difference". However, as stated below, "the

examiner considers Combs et al. to disclose determining a change in the relative position of the short term trend and the baseline trend, by the “trend data retrieved from the implant’s memory” and accumulating those differences by charting the determined changes over time”. Therefore, the claims remain rejected under Combs et al.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1, 4, 13-15, 20-21, 24, 33-35, 39-41, 44, 49-51 and 55-57 are rejected under 35 U.S.C. 102(b) as being anticipated by Combs et al. (US 5,957,861). Combs et al. discloses an impedance monitor that collects impedance values and generates a long term average (LTA) and short term average (STA). The examiner considers the LTA to be the adaptive baseline trend and the STA to be the short term trend. Additionally, the LTA and the STA correspond to different time periods.

Additionally Combs et al. discloses in col. 11, lines 32-36, “trend data retrieved from the implant's memory can be used to chart the variation over time between the two values (LTA and STA) or any other stored values, which could be used to enhance the diagnostic value of the data for the physician”. As such, the examiner considers Combs et al. to disclose determining a change in the relative position of the short term trend and the baseline trend, by the “trend data retrieved from the implant’s memory” and accumulating those differences by charting the determined changes over time.

As to claims 15, 35 and 51, the system of Combs et al. would necessarily measure impedances between 12pm-5pm.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 16, 36 and 52 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Combs et al. (US 5,957,861). Combs et al. discloses the short term average represents the number of hours (preferably one to forty-eight). Therefore, the examiner considers Combs et al. to update the short term trend for two previous days (48 hours).

In the alternative, although the examiner considers Combs et al. to disclose updating the short term trend for two previous days, it would have been obvious to one having ordinary skill in the art at the time the invention was made to update the trend with two previous days data in order to provide the predictable results of collecting several data points to elicit a reasonable sample set for the short term trend.

2. Claims 5-12, 17-18, 25-32, 37-38, 45-48 and 53-54 rejected under 35 U.S.C. 103(a) as being unpatentable over Combs et al. (US 5,957,861). Combs et al. discloses the claimed invention except for the first computation scheme differing from the second computation scheme. It would have been obvious to one having ordinary skill in the art

Art Unit: 3762

at the time the invention was made to have modified the computation algorithms, in order to yield the predictable results of modifying the data collection and therapy in order to meet specific patient needs and requirements.

As to claim 8, 12, 28, 32 and 48, Combs et al. discloses the claimed invention except for the predetermined number of generated measured impedances, wherein the number is 4. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the number of measured impedances, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233 (see MPEP 2144.05). Furthermore, such a modification would yield the predictable results of modifying the therapy to meet specific patient needs and requirements.

As to claim 17-18, 37-38 and 53-54, Combs et al. discloses the claimed invention except for the modifying the trends by a downdrift and updrift. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the trend value of the trend by a downdrift or updrift in order to provide the predictable results of optimizing the recorded impedance data from the patient.

Furthermore, modifying the trend with a specific value of ohms in the downdrift and updrift, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233 (see MPEP 2144.05).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alyssa M. Alter whose telephone number is (571)272-4939. The examiner can normally be reached on M-F 8am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/George R Evanisko/  
Primary Examiner, Art Unit 3762

/Alyssa M Alter/  
Examiner  
Art Unit 3762